

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>MICHAEL GROVES</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 214,183
<b>ARKHAVEN, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>ALLIED MUTUAL INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals the April 28, 2000, Award of Administrative Law Judge Bryce D. Benedict. Oral argument was held November 8, 2000.

**APPEARANCES**

Claimant appeared by his attorney, Roger D. Fincher of Topeka, Kansas. Respondent and its insurance carrier appeared by their attorney, Bret C. Owen of Topeka, Kansas. There were no other appearances.

**RECORD AND STIPULATIONS**

The Appeals Board considered the record and adopted the stipulations contained in the Award of the Administrative Law Judge. In addition, at oral argument before the Board, the parties stipulated that the injury to claimant's left shoulder occurring in March 1996 resulted in no permanent impairment to claimant. Therefore, the decision of the Administrative Law Judge, which found claimant had suffered only a temporary injury to his shoulder, is affirmed.

**ISSUES**

- (1) Did claimant prove that he suffered accidental injury arising out of and in the course of his employment with respondent on the date or dates alleged?
- (2) What is the nature and extent of claimant's injury and disability?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary record filed herein, the Appeals Board finds as follows:

Claimant alleges accidental injury on two separate occasions while working for respondent. Claimant, a CNA, was working for respondent on May 18, 1996, when, as he and another nursing aide were assisting a patient, the patient sat down on claimant's right wrist, which popped the wrist out. Shortly after that incident, the patient became combative. While defending himself, claimant somehow spun around, striking his left hand on a door, putting a hole in the door. Claimant alleges he hurt his left wrist at that time.

Claimant was referred to and received treatment from Glen Singer, M.D., the company doctor. Dr. Singer treated claimant on two occasions, the final examination being May 30, 1996. At that time, Dr. Singer found claimant to be asymptomatic and returned him to work with respondent with no restrictions. Claimant worked through June 3, 1996, when he was terminated for violating company policy after refusing to use a gait belt on certain residents in respondent's facility. After his termination, claimant made no attempt to obtain any other employment. Claimant did file for and eventually received unemployment, although that lasted only for a short period of time.

Claimant sought medical treatment with Sharon L. McKinney, D.O., with the first examination occurring on August 28, 1996. At that time, claimant was complaining of severe pain in his left hand and wrist. Dr. McKinney found claimant's left hand grip strength to be substantially more limited than the right. Claimant could grip 105 pounds on the right, with only a 40-pound grip on the left. She also found a somewhat limited range of motion in the left wrist and testified that the left wrist, in particular the muscle around the base of the thumb, looked swollen as compared to the right. Claimant had no complaints to the right wrist at that time.

Dr. McKinney's records contained no mention of any prior injuries, even though claimant had been diagnosed by Daniel D. Zimmerman, M.D., in February of 1996, with left wrist instability, including chronic de Quervain's syndrome.

Dr. McKinney examined claimant on September 25, 1996, October 23, 1996, June 11, 1997, August 29, 1997, and April 8, 1998. At the time of the August 1997 examination, Dr. McKinney diagnosed claimant with reflex sympathetic dystrophy and/or pronator teres syndrome on the left side. She also noted the reflex sympathetic dystrophy appeared to be developing on the right as well. Her diagnosis was made on the basis of swelling, claimant's skin temperature, skin discoloration due to excessive blood flow and, finally, extensive pain.

Dr. McKinney determined that, at that time, claimant was no longer capable of performing any of the tasks he had performed in the fifteen years prior to his injury with respondent. She also testified that this condition was a direct result of claimant's injury occurring on January 3, 1996. She then clarified her testimony, stating that the January 3, 1996, injury date was, in reality, January 3, 1994.

Dr. McKinney's testimony was somewhat confused in that she alternated between discussing the January 1996 and January 1994 dates. Certain of her records indicated claimant suffered an injury in January of 1996, which she stated was a typographical error. Other forms completed by her office staff and also by claimant showed the injury date as January 3, 1994. Dr. McKinney stated that she was assuming the injury she was treating claimant for was suffered while he worked for respondent, although the date of injury in question was confused.

Claimant's history is significant in that, in January 1994, while working for Meadowbrook Manor Nursing Home, he suffered an injury to his left wrist when he was sat on by a patient at the nursing home. At that time, claimant's left wrist snapped or popped, and he suffered an immediate onset of pain. Claimant continued having pain in his left wrist for a substantial period of time, telling Dr. Zimmerman that, at times, he would wake up with his left wrist and arm feeling dead. It was after this injury that Dr. Zimmerman diagnosed de Quervain's in claimant's left wrist.

Claimant was evaluated and treated by P. Brent Koprivica, M.D., with the first examination occurring on July 9, 1997. Dr. Koprivica found claimant to be a cooperative, 5-foot-6½-inch, 320-pound, 38-year-old, right-hand dominant individual. Claimant's complaints of pain were so significant that, during the examination, Dr. Koprivica found it difficult to even check claimant's pulse. Dr. Koprivica did note that claimant had a positive Finkelstein's test at the time of his examination. Dr. Koprivica indicated, however, no skin changes were noted during the examination, which conflicts with the reflex sympathetic dystrophy diagnosis of Dr. McKinney, approximately a month and a half later.

Dr. Koprivica was unable to state within any degree of medical probability that claimant's condition was any different at the time of his examination than it was before claimant's accident, at the time of Dr. Zimmerman's examination in February of 1996.

Dr. Koprivica was later provided additional medical records on claimant, including the treatment records of Lynn D. Ketchum, M.D., Allen County Hospital and Dr. McKinney. Dr. Koprivica could find no causal relationship between the surgeries performed by Dr. Ketchum and claimant's alleged injuries with respondent.

Claimant was examined and treated by plastic surgeon and hand specialist Lynn D. Ketchum, M.D. Dr. Ketchum first saw claimant on June 18, 1998. At that time, claimant's main complaints were limited to his bilateral upper extremities. These complaints were diagnosed as stenosing tenosynovitis of the first extensor compartment of both distal forearms and wrists, which is commonly known as de Quervain's disease. Dr. Ketchum found claimant's grip strength to be 59 pounds on the right and 45 pounds on the left. He performed a release of the first extensor compartment of the left wrist on March 17, 1999. He performed the same procedure on the right wrist on April 7, 1999. At the time of Dr. Ketchum's examination and treatment, claimant did not have symptoms of reflex sympathetic dystrophy.

Dr. Ketchum initially testified that claimant's condition was related to his injuries suffered while working for respondent. However, Dr. Ketchum was unaware of Dr. Zimmerman's diagnosis of de Quervain's syndrome to claimant's left wrist in February 1996. When provided this information, Dr. Ketchum stated it would be difficult to give a valid causation opinion on claimant's left wrist. Dr. Ketchum also found it significant that claimant did not request right wrist treatment until February 1997, several months after he terminated his employment with respondent. Dr. Ketchum testified that he did not have evidence sufficient to comment on the causational aspects of the right wrist de Quervain's syndrome. Even though Dr. Ketchum testified that the type of work claimant performed with respondent was compatible with a possible aggravation of de Quervain's syndrome, he was unable to state within a reasonable degree of medical probability what caused claimant's problems.

In addition to the de Quervain's and reflex sympathetic dystrophy diagnoses, claimant has also been diagnosed with epilepsy, diabetes, congestive heart failure and pulmonary disease. At the time of the regular hearing, claimant was on Social Security disability. He was on several medications for his diabetes, heart problems and epilepsy, and was unable to walk even short distances without having to stop and gasp for air.

Since leaving respondent, other than collecting a short period of unemployment compensation, claimant has made no attempt to obtain work.

In proceedings under the Workers Compensation Act, it is claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence. See K.S.A. 44-501 and K.S.A. 44-508(g). Claimant fails in this burden.

Claimant alleges accidental injury to his bilateral wrists on May 18, 1996, and in a series through June 3, 1996. Claimant was examined and treated by the company doctor, Dr. Singer, who released him without restrictions, describing him as asymptomatic on May 30, 1996. Claimant's employment with respondent continued for only for a few days after that release date, with his termination occurring on June 3, 1996.

Claimant did not seek additional treatment until August 1996 with Dr. McKinney, at which time his symptoms were limited to his left hand and wrist. Dr. McKinney's diagnosis did not include de Quervain's syndrome but, instead, was reflex sympathetic dystrophy and/or pronator teres syndrome, neither of which were supported by the examinations of Dr. Ketchum and Dr. Koprivica.

The Administrative Law Judge found that claimant failed to prove that he suffered an accidental injury or a series of accidental injuries for the alleged traumas to his right wrist. While respondent acknowledged claimant suffered injury to his left wrist on May 18, 1996, respondent contended, and the Administrative Law Judge agreed, that claimant proved no permanent injury to his left wrist as a result of his employment with respondent.

The Appeals Board agrees with the Administrative Law Judge's conclusions. The evidence confirms that claimant suffered preexisting de Quervains' disease to his left wrist as diagnosed by Dr. Zimmerman in February 1996. There is little credible medical evidence in the record tying claimant's ongoing left wrist problems to an injury with respondent. Claimant contends that his right wrist became symptomatic after the incident with respondent and then grew worse as he overcompensated while protecting the left wrist. Again, the medical evidence does not support claimant's contentions.

The Appeals Board finds that claimant has failed to prove a permanent injury as a result of the May 18, 1996, trauma to his left wrist. Additionally, claimant has failed to prove that he suffered accidental injury arising out of and in the course of his employment with respondent to his right wrist. Finally, the Appeals Board finds that the de Quervain's conditions, for which Dr. Ketchum performed surgery on claimant, are not related to his employment with respondent.

The Appeals Board, therefore, finds that the Award of Administrative Law Judge Bryce D. Benedict dated April 28, 2000, should be affirmed.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Bryce D. Benedict dated April 28, 2000, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 2000.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Roger D. Fincher, Topeka, KS  
Bret C. Owen, Topeka, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director